

action against a civilian employee for committing or participating in a prohibited personnel practice or for engaging in illegal or improper conduct. This prohibition applies regardless of whether the participation or conduct is also the basis for the disciplinary action proposed by the OSC.

b. In certain situations, counsel provided by DA may be limited to representing the individual only with respect to some of the pending matters, if other specific matters of concern to the OSC or MSPB do not satisfy the requirements contained in this regulation.

4. Attorney-Client Relationship

a. An attorney-client relationship will be established and continued between the suspected or accused individual and assigned DA counsel.

b. In representing a DA employee or military member, the DA attorney designated as counsel will act as a vigorous advocate of the individual's legal interests before the OSC or MSPB. The attorney's professional responsibility to DA will be satisfied by fulfilling this responsibility to the employee or military member. Legal representation may be terminated only with the approval of the DA General Counsel and normally only on the basis of information not available at the time the attorney was assigned.

c. The attorney-client relationship may be terminated if the assigned DA counsel determines, with the approval of the DA General Counsel, that—

(1) The military member or civilian employee was acting outside the scope of his or her official duties when engaging in the conduct that is the basis for the OSC investigation or charge; and

(2) Termination is not in violation of the rules of professional conduct applicable to the assigned counsel.

d. The DA attorney designated as counsel may request relief from the duties of representation or counseling without being required to furnish explanatory information that might compromise confidential communications between the client and the attorney.

5. Funding

This regulation authorizes cognizant DA officials to approve requests from military members or civilian employees for travel, per diem, witness appearances, or other departmental support necessary to ensure effective legal representation by the designated counsel.

6. Status

A military member's or civilian employee's participation in OSC investigations, MSPB hearings, and other related proceedings will be considered official depart-

mental business for time and attendance requirements and similar purposes.

7. Advice to Witnesses

The following advice to military members and civilian employees questioned during the course of an OSC investigation may be appropriate in response to these frequent inquiries:

a. A witness may decline to provide a "yes" or "no" answer in favor of a more qualified answer when this is necessary to ensure accuracy in responding to an OSC interviewer's question.

b. Requests for clarification of both questions and answers are appropriate to avoid misinterpretation.

c. Means to ensure verifications of an interview by OSC investigators are appropriate, whether or not the military member or civilian employee is accompanied by counsel. Tape recorders may only be used for this purpose when—

(1) The recorder is used in full view.

(2) All attendees are informed.

(3) The OSC investigator agrees to record the proceeding.

d. Any errors that appear in a written summary of an interview prepared by the investigator should be corrected before the member or employee signs the statement. The military member or civilian employee is not required to sign any written summary that is not completely accurate. A military member or civilian employee may receive a copy of the summary as a condition of signing.

PART 518—THE FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

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AUTHORITY: 5 U.S.C. 551, 552, 552a, 5101–5108, 5110–5113, 5115, 5332–5334, 5341–42, 5504–5509, 7154; 10 U.S.C. 130, 1102, 2320–2321, 2328; 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181–188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

SOURCE: 71 FR 9222, Feb. 22, 2006, unless otherwise noted.

Subpart A—General Provisions

§ 518.1 Purpose.

This part provides policies and procedures for implementation of the Freedom of Information Act (5 U.S.C. 552, as amended) and Department of Defense Directive (DoDD) 5400.7 and promotes uniformity in the Department of Defense (DoD) Freedom of Information Act (FOIA) Program. This Army regulation implements provisions for access and release of information from all Army information systems (automated and manual) in support of Army Information Management (AR 25–1).

§ 518.2 References.

Required and related publications are listed in Appendix A of this part.

§ 518.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this part are explained in the glossary of AR 25–55.

§ 518.4 Responsibilities.

(a) The Administrative Assistant to the Secretary of the Army (AASA) is

responsible for issuing policy and establishing guidance for the Army FOIA Program. AASA has the responsibility to approve exceptions to this regulation that are consistent with controlling law and regulations. AASA may delegate the approval authority, in writing, to a division chief, under its supervision, within that agency in the grade of O6 or civilian equivalent.

(b) The Administrative Assistant to the Secretary of the Army, (AASA), The Records and Programs Agency, (RPA), Records Management and Declassification Agency (RMDA), is responsible for developing and recommending policy to AASA concerning the Army FOIA program and overall execution of the program under the policy and guidance of AASA.

(c) The Chief of Information Officer (CIO), G6 will provide oversight of the FOIA program as necessary in compliance with Federal Statutes, regulations, Office of Management and Budget (OMB), and the Office of Secretary of Defense (OSD).

(d) Heads of Army Staff agencies, field operating agencies, major Army commands (MACOMS), and subordinate commands are responsible for the supervision and execution of the FOIA program in functional areas and activities under their command.

(e) Heads of Joint Service agencies or commands for which the Army is the Executive Agent, or otherwise has responsibility for providing fiscal, logistical, or administrative support, will adhere to the policies and procedures in this regulation.

(f) Commander, Army and Air Force Exchange Service (AAFES), is responsible for the supervision of the FOIA program within that command pursuant to this part.

§ 518.5 Authority.

(a) This part governs written FOIA requests from members of the public. It does not preclude the release of personnel or other records to agencies or individuals in the Federal Government for use in official work.

(b) Soldiers and civilian employees of the Department of the Army (DA) may, as private citizens, request DA or other agencies' records under the FOIA. They